



Court of Federal Claims Bar Association Newsletter

Spring 2003 Edition

Message from the Chief Judge



I'm pleased to share some thoughts, at the request of our president, John Euler, for this edition of the newsletter. It will be one year in mid-May that President Bush designated me as chief judge of the court. This prompts me to look back to see what progress, if any, the court has made on the program that I announced. The program, as some of you will recall, was the "Three C's." It springs from my reflection on the nature of justice. My conclusion was that justice should be current, complete and co-operative.

By "current" justice, I mean that the court should strive to make decisions promptly.

By "complete" justice, I mean that the court's decisions should provide adequate relief for the injury sustained. Pre-judgment interest and contracts implied in law come to mind as examples frequently cited to me as limitations that cause the Court to fall short of the complete justice mark. Whether in the end they turn out to be shortcomings or not, these and other issues raised by those familiar with the court need to be studied.

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Chief Judge to Offer his "Vision for the Future of the Court" at Bar Association Program

The Court of Federal Claims Bar Association is extremely pleased and honored to present a program featuring the Honorable Edward J. Damich, Chief Judge of the Court of Federal Claims. Chief Judge Damich will speak at the court on his "Vision for the Future of the Court" on Friday,

April 25, 2003, at 3:00 PM. This program will be immediately followed by a reception sponsored by the Bar Association. The program and reception are both open to the public. To confirm your attendance at this program please contact Mark Melnick at mark.melnick@usdoj.gov.

Bar Association on the Internet

Find out about upcoming Bar Association programs and other important information from the CFC's Web site.

www.uscfc.uscourts.gov

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“Cooperative” justice is the recognition that the administration of justice is not confined to judges. The bar association, other groups devoted to the improvement of the administration of justice, other branches of the government, and even input from abroad can help the court to do the best job it can. The court’s advisory council also plays an important role in this regard.

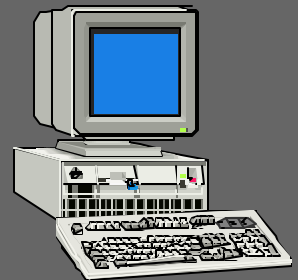
Happily, I can point to progress in all three areas. First, the latest statistics illustrate that the court’s determined effort to become more current has succeeded, although more work needs to be done. Second, the advisory council will shortly complete its study on the court’s jurisdiction. Third, the judges have been more active than ever in outreach to the legal community in this country and abroad. The judicial conference in October 2002, for example, was widely perceived as one of the best ever. The bar association’s efforts were essential to this success.

Indeed, all of this progress is the result of a cooperative effort. A chief judge may announce any program that he or she wants; its success depends upon the acceptance and execution of that program by the court and its associates in the administration of justice. In addition, any chief judge builds on the foundation of his or her predecessors. I’m lucky to have the continued wisdom of Judge Baskir and Senior Judge Smith ready at hand.

Further progress on the Three C’s will continue to challenge us in the future. The court’s efforts to become more current will always be a goal. I look forward to scholarly comment on the advisory council’s jurisdiction study. The vaccine program will likely be the focus of legislative activity—autism and small pox have been mentioned. The Court’s cooperation with the bar association will continue and deepen. Planning for the next judicial conference is proceeding apace.

Yes, we all have a lot more work to do, but we have a significant record of accomplishment to encourage us.

Edward J. Damich
Chief Judge, U.S. Court of
Federal Claims



Bar Association Announces New Web Site

The Court of Federal Claims Bar Association now has its own Internet web site at <http://www.uscfc.uscourts.gov/barassociation.htm>. Please be sure to bookmark this address among your Internet favorites, and visit often for announcements of events and other exciting information.

Message from the President

There is a lot happening and much is planned for this year at the Bar Association. First, you are reading one of the successful projects, our first issue of the Newsletter for 2003. This is a great initiative started last year under Lew Wiener's leadership and brought to impressive reality by Marc Smith. There is also a vibrant CLE program run by Mark Melnick which kicked off in February with a session on Electronic Filing in our Court. The web page is "up" thanks to Gabrielle Manganiello and good help from Maggie Earnest, our redoubtable Clerk of Court. A major undertaking will be revision of the Deskbook for Practitioners. Volunteers willing and interested in working this project are welcome.



A major theme for the Association in 2003 will be **outreach**. We want actively to engage more members in our programs and encourage new membership. In keeping, we are going to try to simulcast some of our "brown bag" CLE events to other cities. President-Elect David Churchill also is setting up a jointly sponsored panel with the ABA and the CFC Bar Association in Scottsdale, Arizona in May at a Public Contact Law Section meeting. Finally, I hope to enlist the active assistance of Bar Association members to work with the committee chairs on any and all of the projects mentioned above as well as other matters such as the fall judicial conference, membership, and communications. Ideas for additional initiatives are also welcome for consideration. Just send me an e-mail and I will pass it on to the cognizant chairperson.

Finally, the Association is fortunate to have an interested and supportive bench at the U.S. Court of Federal Claims. Since Judge Loren Smith's service as Chief Judge, this has been a keystone for the notable collegiality between the bench and bar at our Court. Both Judge Baskir and Chief Judge Damich have continued the tradition. I hope that the many activities of the Association throughout the year will further strengthen this bond.

- John Euler

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## Upcoming Brown Bag

Over the next few months the Court of Federal Claims Bar Association will be presenting several exciting brown bag programs. As in prior years these bag programs will be open to the public at no charge. In addition to our April 25 special event with Chief Judge Damich and our May 2 program in conjunction with the American Bar Association in Scottsdale, Arizona, we are very pleased to announce the following brown bag program:

May 14, 2003 – Computers in the Courtroom (A Demonstration of the Court's Electronic Courtroom And The Use Of Computers And Other Technology At Trial). The program will be held in Courtroom 4 at the Court. Panelists will be Judge Francis Allegra, Bryant Snee of the Department of Justice, and David Kasanow of McKenna Long and Aldridge.

To confirm your attendance at this program, to offer ideas for future programs, or for further information, please contact Mark Melnick at [mark.melnick@usdoj.gov](mailto:mark.melnick@usdoj.gov).

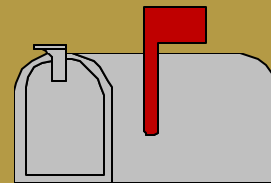
## Upcoming Brown Bag Programs Court's Case Management/Electronic Case Filing System Goes Live

The much-anticipated rollout of the Court of Federal Claims' new Case Management / Electronic Case Filing (CM/EC F) system begins on March 17, 2003. The first part of the court's docket to be converted into electronic cases will be all of its existing government contracts cases where the Department of Defense (DOD) is the defendant. For these cases, as well as all new DOD contracts cases filed in the Court of Federal Claims, electronic filing will be mandatory. Attorneys are required to register for CM/ECF accounts and must pass an on-line certification test to receive a user ID and password.

As part of this rollout on March 17, the Pacer/ WebPacer system will be replaced by CM/ ECF. With CM/ECF, you can still get electronic docket sheets. Additionally, new electronic cases will have case documents available in PDF format for viewing. For additional information on receiving a user ID and password, technical requirements, training and much more please see the CM/ECF section of the court's web site at [www.uscfc.uscourts.gov/CMECF.htm](http://www.uscfc.uscourts.gov/CMECF.htm).

## Change of Address?

RCFC 83.1(c)(3) requires the attorneys of record for all parties in a Court of Federal Claims case to "promptly file with the clerk and serve on all other parties a notice of any change in address." And please remember, when you are notifying the Court of any change of address, also notify the Bar Association. This will help to ensure that you continue to receive notification of Court and Bar Association announcements. The Association's web site includes a change of address form to make this notification quick and painless.



## ***16<sup>th</sup> Judicial Conference Scheduled***

The Court of Federal Claims has announced that its 16<sup>th</sup> Judicial Conference will be held on Tuesday, October 14, 2003, at the Clarion Hotel and Conference Center in Shepherdstown, West Virginia, just a few short miles from Harper's Ferry. The hotel is only a one hour drive from Dulles Airport and 90 minutes from downtown Washington DC. Check future editions of the Court of Federal Claims Bar Association Newsletter for the program agenda and other important announcements regarding the conference.

## **Dues Now Due!**

Membership applications for the Court of Federal Claims Bar Association were mailed out membership applications in January. If you have not done so already, please be sure to complete and return your membership renewals to F. Brook Voght, Treasurer, Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, N.W., Washington, DC 20004, as early as possible. Membership forms are available at <http://www.uscfc.uscourts.gov/Bar/barapp.pdf>. Fees have remained the same as last year: \$60 for private practitioners, \$45 for government agency practitioners and \$15 for law clerks.

## ***Court Proposes New Rules***

On February 25, 2003, the Court of Federal Claims issued a notice of proposed amendments to its rules. The most substantive change proposed is the adoption of Federal Rule of Civil Procedure 7.1 governing Disclosure Statements. This rule requires non-governmental corporate parties to file two copies of a statement that "identifies any parent corporation and any publically held corporation that owns 10% or more of its stock or states that there is no such corporation." This rule would be designated as RCFC 7.1, and the current Rule 7.1 would be re-designated as RCFC 7.2. To view the proposed rule changes in their entirety please see the "Rules" section of the court's website at <http://www.uscfc.uscourts.gov/rules.htm>.



## ***CFC Bar Association Participating in ABA Conference in Scottsdale***

In an effort to expand our Association's activities outside of Washington, DC, the Court of Federal Claims Bar Association are collaborating with the ABA on one of the panels at the ABA Public Contract Section's Spring meeting in Scottsdale, Arizona on May 2, 2003. The topic of the panel will be "Litigating the Big Case". Senior Judge Eric Bruggink of the Court of Federal Claims will give a judicial perspective, Deborah Bynum from the U.S. Department of Justice will present a federal government view, Paul Debolt from Venable LLP will moderate the panel and will offer a view from the private bar, Devon Engel from General Dynamics Decision Systems, Inc. will provide the view from "in-house," and Judge Carol Park-Conroy will present a Board of Contract Appeals perspective.

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This program presents a unique opportunity for members of our Association in the Western states to participate in one of our CLE activities that have been enormously successful here in Washington. The cut-off date for hotel reservations at the Doubletree La Posada Resort in Scottsdale is April 7. For more information on this conference please see <http://www.abanet.org/contract/admin/programs/spring2003.pdf>.

Also, a pre-meeting Grand Canyon Hike is planned for April 30. If you are interested please make a hotel reservation on the South Rim for the nights before and after the hike (1-888-297-2757). There will be an informal prelaunch gathering in the Zane Grey Suite of the El Tovar Hotel at 5:00 PM on the eve of the hike. To confirm your participation or for further information please contact Greg Bingham at [gbingham@tuckeralan.com](mailto:gbingham@tuckeralan.com), Dave Churchill at [dchurchill@jenner.com](mailto:dchurchill@jenner.com), or Pat Wittie at [pwittie@reedsmith.com](mailto:pwittie@reedsmith.com).



**UNITED STATES COURT OF FEDERAL  
CLAIMS GENERAL ORDER NO. 2003 - 42  
INTERIM PROCEDURES FOR  
ELECTRONIC CASE FILING**

The following provisions are effective March 17, 2003; they will eventually be superseded by a formal appendix to be adopted as part of the court’s rules. For purposes of these provisions, the term “Electronic Filing System” refers to the court’s system that receives documents filed in electronic form. The term “Filing User” refers to a member of the court’s bar who has a court-issued log-in and password to file documents electronically. References to the RCFC are to the Rules of the United States Court of Federal Claims as revised May 1, 2002.

*(See pages 7 and 8 of this Newsletter for a reprint of General Order No. 42).*

**I. Scope of Electronic Filing.**

1. The court shall designate which cases shall be assigned to the Electronic Filing System. These may be found at the court’s Internet site – <http://www.uscfc.uscourts.gov>. Independently, the Clerk shall notify counsel that their case has been assigned

to the Electronic Filing System. Except as expressly provided and in exceptional circumstances preventing a Filing User from filing electronically, all motions, memoranda of law, and other pleadings and documents required to be filed with the court in connection with a case assigned to the Electronic Filing System shall be electronically filed.

2. The filing of initial papers, including the complaint, and the payment of any initial filing fee, shall be accomplished in the traditional manner in accordance with the RCFC rather than electronically. For cases assigned to the Electronic Filing System, all subsequent documents shall be filed electronically except as provided in this General Order or as ordered by the presiding judge.

3. Unless otherwise ordered by the presiding judge, Filing Users shall submit in electronic form all documents referenced as exhibits or attachments. All documents with exhibits and attachments shall be filed together under one entry number. A Filing User shall submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court. See paragraph 4 for size limitations. Excerpted material shall be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under this rule do so without prejudice to their right to timely seek leave to

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file additional excerpts or the complete document. Responding parties may timely file additional excerpts or the complete document that they believe are directly germane.

4. A single court filing (*e.g.*, a brief or memoranda and an appendix) may be broken into several Adobe PDF files. Unless otherwise ordered by the presiding judge, each such Adobe PDF file shall not exceed 1 megabyte in size. For files that would exceed this limitation, the Filing User shall seek appropriate relief from the presiding judge, who may, for example, authorize the filing in some other electronic format (*e.g.*, a CD-Rom) or in paper form.

5. Where documents, including exhibits or attachments, would exceed 50 pages when printed, the party shall supply a courtesy copy of the document in paper form, unless otherwise ordered. The presiding judge may order the parties to supply courtesy copies in paper form of any document electronically filed.

6. Documents ordered to be placed under seal shall be filed conventionally and not electronically unless specifically authorized by the presiding judge. A motion to file documents

under seal may be filed electronically unless prohibited by law. The order of the presiding judge authorizing the filing of documents under seal may be filed electronically unless prohibited by law. A paper copy of the order shall be attached to the documents under seal and be filed with the clerk together with a notice of filing.

## **II. Eligibility, Registration, Passwords**

7. Attorneys admitted to the bar of this court may register as Filing Users of the court's Electronic Filing System. Registration is on a form prescribed by the clerk and requires the Filing User's name, address, telephone number, facsimile number, Internet e-mail address, and a declaration that the attorney is admitted to the bar of this court.

8. Registration as a Filing User constitutes consent to electronic service of all documents as provided in this General Order in accordance with the RCFC.

9. Once registration is completed, Filing Users shall receive notification of their user log-ins and passwords. Filing Users agree to protect the security of their passwords and immediately notify the clerk if they learn that their passwords have been compromised. Users may be subject to sanctions for failure to comply with this provision.

10. Notwithstanding the foregoing, attorneys and others who are not Filing Users may, for good cause, seek to be exempted from electronically filing pleadings and other papers in a case assigned to the Electronic Filing System by filing an appropriate

motion. Once registered, a Filing User may, for good cause, seek to withdraw from participation in the Electronic Filing System by filing an appropriate motion.

## **III. Consequences of Electronic Filing**

11. Electronic transmission of a document to the Electronic Filing System consistent with this General Order, together with the transmission of a "Notice of Electronic Filing" from the court, constitutes filing of the document under RCFC 5 and entry of the document on the docket kept by the clerk under RCFC 58 and 79.

12. When a document has been filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form and subsequently submitted electronically under paragraph 2 of this General Order, a document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing from the court.

13. Unless otherwise ordered by the presiding judge, electronic filing shall be completed before midnight local time in Washington, D.C., in order to be considered timely filed that day.

## **IV. Signatures**

14. The user log-in and password required to submit documents to the Electronic Filing System serve

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as the Filing User's signature on all electronic documents filed with the court. They also serve as a signature for purposes of RCFC 11 and any other purpose for which a signature is required in connection with proceedings before the court. Each document filed electronically shall, if possible, indicate that it has been electronically filed. Electronically filed documents shall include a signature block in compliance with RCFC 11(a). In addition, the name of the Filing User under whose log-in and password the document is submitted shall be preceded by an "s/" and be typed in the space where the signature would otherwise appear.

15. No Filing User or other person may knowingly permit or cause a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

16. Documents requiring signatures of more than one party shall be electronically filed either by: (1) submitting a scanned document containing all necessary signatures; (2) representing the consent of the other parties on the document; or (3) in any other manner approved by the court. For further guidance, see paragraph 21.

## **V. Service of Documents by Electronic Means**

17. The Electronic Filing System automatically generates a Notice of Electronic Filing at the time a document is filed and automatically sends this Notice to all case participants registered to use the Electronic Filing System. As to case participants who are registered, the Electronic Filing System thus itself satisfies the service requirement of RCFC 5 and the proof of service requirement of RCFC 5.1. Where one or more case participants entitled to service are not registered to use the Electronic Filing System, each person electronically filing a pleading or other document shall serve the Notice of Electronic Filing on such participants by e-mail, hand, facsimile, or by first-class postage prepaid.

## **VI. Entry of Court Orders; Notice of Court Orders and Judgments/ Appeal**

18. All orders, opinions, judgments, and proceedings of the court shall be filed in accordance with this General Order, which shall constitute entry on the docket kept by the clerk under RCFC 58 and 79. All orders shall be filed electronically by the court or court personnel and shall have the same force and effect as if the judge had affixed the judge's signature to a paper copy of the order and it had been entered on the docket in the conventional manner.

19. Immediately upon the entry of an order, opinion or judgment in an action assigned to the Electronic Filing System, the Electronic Filing System will automatically transmit

to the Filing Users in the case, in electronic form, a Notice of Electronic Filing. This transmission constitutes the notice required by RCFC 77(d). The clerk shall give notice in paper form in accordance with the RCFC to a person or party who has not consented to electronic service.

20. Notices of appeal to the United States Court of Appeals for the Federal Circuit shall be filed, and fees paid, in the traditional manner rather than electronically.

## **VII. Retention; Technical Failure; Public Access**

21. Documents that are electronically filed and require original signatures other than that of the Filing User (*e.g.*, affidavits, joint status reports) shall be maintained in paper form by the Filing User until three years after all time periods for appeal expire. On request of the presiding judge, the Filing User shall provide original documents for review.

22. A Filing User whose filing is made untimely as the result of technical failure of the Electronic Filing System may seek appropriate relief from the presiding judge. Should the Electronic Filing System be inaccessible for any significant period of time, the clerk may deem the clerk's office inaccessible under RCFC 6.

23. Documents filed electronically may be reviewed at the clerk's office. A person may also access the Electronic Filing System at the court's Internet site – <http://www.uscfc.uscourts.gov> – by obtaining a PACER log-in and password.

s/Chief Judge Edward J. Damich  
March 6, 2003